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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,233	10/28/2003	Harold H. Greenberg	3003-A-6	4954
26740 7590 11/29/2007 C. ROBERT VON HELLENS CAHILL, VON HELLENS & GLAZER P.L.C. 155 PARK ONE, 2141 E. HIGHLAND AVENUE PHOENIX, AZ 85016			EXAMINER LAUX, JESSICA L	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 11/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/695,233	<b>Applicant(s)</b> GREENBERG ET AL.	
	<b>Examiner</b> Jessica Laux	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 17, 18 and 23-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-9, 17, 18 and 23-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 09/06/2007 have been fully considered but they are not persuasive.

Regarding applicants arguments as they pertain to the lintel: applicant's cited definition is but one of many accepted technical definitions of a lintel and therefore does not limit the term to the argued definition. Furthermore, applicants own claimed lintel does not meet the argued definition as it is not over an opening, such as a door or window. However should applicant fail to agree it is noted that applicant's claimed lintel does horizontally extend over the opening between foundation members, as does the "lintel", elements 14, 15 of Gravier. Therefore just as applicant's disclose and claim a lintel so does the prior art of Gravier. When considering the unique configuration of blocks 27 forming the block array, it is determined that such a unique configuration is for the purposes of providing a solid and strong support on which to construct the rest of the wall. In view of such a finding one skilled in the art would have inventive whatsoever to substitute a C-shaped lintel for the blocks as recited in the rejection.

Regarding applicants arguments as they pertain to the Wallin reference not containing blocks or bricks: the office has never made such a contention therefore the arguments are moot.

Regarding applicants arguments to the method claims: the recited steps are broad method steps that do not require specific structure other than the structure of the apparatus. As the prior art teaches and discloses the claimed structure the method

steps of "placing", "installing", "building", "laying" are all steps that would be obvious to one of ordinary skill in the art.

Regarding the arguments as they pertain step f of claim 32: the limitation "in conjunction with" would be obvious as the tensioning rods extend through the blocks and therefore it would be obvious that the installing of the rods into the lintel would be in conjunction with the step of laying.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al. (5623797) in view of Greenberg (4726567).**

In regards to claim 1: A wall structure having an above ground wall, said wall structure comprising in combination:

a) a plurality of footings disposed at least partially in the ground at each end of said wall (Figure 1; 16 and 17);

b) said wall including at least a lintel (Figure 1, where elements 14 and 15 indicate the lintel of Gravier), each end of said lintels being located upon and receiving support (Figure 1 – the bottom block place directly on footings 16 and 17) from

adjacent ones said footings to locate each of said lintels above ground and a plurality of courses extending upwardly from each of said lintels;

d) a post (generally indicated as 45 of Figure 1) extending upwardly from each said footings; and

e) at least one further tensioning rod extending upwardly from within each of said footings (66) and into the respective one of said posts and adapted for resisting tilting of said wall.

Gravier et al. does not teach at least one tensioning rod extending upwardly from each of said lintels into at least some of said plurality of courses. Greenberg teaches a wall structure wherein post-tensioning rods are positioned at a predetermined interval along the fence and are imbedded at one end in a footer (which is structurally and functionally equivalent to the lintel of Gravier) and extend upwardly through the wall (Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the structure, as taught by Gravier et al., to have post tensioning rods extending through the wall, as taught by Greenberg, as the rods would provide necessary additional structural support to the wall if forces exerted on the wall required such.

In regards to claim 2: The wall structure as set forth in Claim 1 above, including a plate (Figure 1 – the bottom block place directly on footings 16 and 17) disposed on each of said footings for supporting an end of said lintel.

In regards to claim 3: The wall structure as set forth in Claim 1 above, wherein each of said posts includes a vertical slot for receiving an end of said wall (Figure 1).

In regards to claim 4: The wall structure as set forth in Claim 3 above, including a plate (Figure 1 – the bottom block place directly on footings 16 and 17) disposed on each of said footings for supporting said post and said lintel.

In regards to claim 5: The wall structure as set forth in Claim 3 above, wherein an end of each of said lintels extends into said slot of each of adjacent ones of said posts (Figure 1).

In regards to claim 6: The wall structure as set forth in Claim 3 above, including at least one rebar disposed longitudinally within each of said lintels and grout (Col. 4, lines 41-43) for imbedding said rebar within said lintel and a lower end of at least one of said tensioning rods.

**Claims 7-9, 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al. (5623797) in view of Greenberg (4726567) and further in view of Wallin (5864999).**

In regards to claim 7: Gravier et al. in view of Greenberg teaches the wall structure as set forth in claim 1 above, but does not teach that the lintel is generally C-shaped in cross section. Wallin teaches the use of a C-shaped lintel (9 and 10; Figures 6 and 8) in a wall structure as a common and known practice in the art. Therefore it would have been obvious to one of ordinary skill in the art to modify Gravier et al, in view of Greenberg to have a lintel that is C-shaped.

In regards to claim 8: The wall structure as set forth in Claim 1 above, wherein said lintel includes a longitudinally oriented upwardly facing opening (Figures 6 and 8).

In regards to claim 9: The wall structure as set forth in Claim 8 above, wherein said tensioning rods extend upwardly through said opening (Figure 11).

In regards to claim 17: The wall structure as set forth in Claim 1 above, wherein said plurality of courses comprise concrete masonry units (Greenberg – Col. 2, lines 50-51).

In regards to claim 18: The wall structure as set forth in Claim 1 above, wherein said plurality of courses comprise bricks having at least one passageway there-through. Gravier et al. in view of Greenberg does not teach the use of bricks. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use bricks that have at least one passageway because Applicant has not disclosed that the use of bricks provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected the masonry units of the prior art, and applicant's invention, to perform equally well with either the masonry units or the claimed brick because both would provide a suitable wall structure. Therefore it would have been prima facie obvious to modify Gravier et al. in view of Greenberg to obtain the invention as specified in claim 18 because such a modification would have been considered a mere design consideration with fails to patentably distinguish over the prior art.

**Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al. (5623797) in view of Greenberg (4726567) as applied to claims 1-9 and 17-18 above.**

These claims recite the basic steps of “developing footings”, “installing tension rods”, “placing plates”, “building a post”, “placing a lintel”, “laying courses of brick or masonry”, and “installing tensioning rods into the wall”. As such, they merely recite the obvious method of forming the wall structure as recited in claims 1-9 and 17-18.

**Claims 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al. (5623797) in view of Greenberg (4726567).**

In regards to claim 26: A wall structure having an above ground wall, said wall structure comprising in combination:

a) a plurality of footings disposed at least primarily in the ground at each end of said wall (Figure 1; 16 and 17);

b) said wall including a lintel, each end of said lintel being supported above ground on adjacent ones of said footings and a plurality of courses extending upwardly from said lintel;

d) a post extending from a respective one of said plurality of footings (Figure 1; 12 and 13) for supporting an end of said wall, said post including a vertical slot for receiving the corresponding end of said wall (Figure 1); and

e) at least one further tensioning rod (Figure 1; element 66) extending upwardly from within each a respective one of said plurality of footings into the respective one of said posts and adapted for resisting tilting of said post.

Gravier et al. does not teach at least one tensioning rod extending upwardly from said lintel into said wall. Greenberg teaches a wall structure wherein post-tensioning rods are positioned at predetermined interval along the fence and are imbedded at one



end in a footer and extend upwardly through the wall (Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the structure, as taught by Gravier et al., to have post tensioning rods extending through the wall, as taught by Greenberg, as the rods provide additional support to the wall.

In regards to claim 27: The wall structure as set forth in Claim 26 above, including a starter course (Figure 1 – the bottom block place directly on footings 16 and 17) disposed on the respective one of said plurality of footings for supporting an end of said lintel.

In regards to claim 28: The wall structure as set forth in Claim 26 above, including at least one rebar disposed longitudinally within said lintel and grout (Col. 4, lines 41-43) for imbedding said rebar and a lower end of said tensioning rod within said lintel.

**Claims 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al. (5623797) in view of Greenberg (4726567) and further in view of Wallin (5864999).**

In regards to claim 29: Gravier et al. in view of Greenberg teaches the wall structure as set forth in claim 26 above, but does not teach that the lintel is generally C-shaped in cross section. Wallin teaches the use of a C-shaped lintel (9 and 10; Figures 6 and 8) in a wall structure.

In regards to claim 30: The wall structure as set forth in Claim 26 above, wherein said lintel includes a longitudinally oriented upwardly facing opening (Figures 6 and 8).

In regards to claim 31: The wall structure as set forth in Claim 30 above, wherein each of said tensioning rods extends upwardly through said opening (Figure 11).

**Claims 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al (56237970 in view of Greenberg (4726567).**

These claims recite the basic steps of "developing footings", "installing rods", "building posts", "locating a lintel", "laying courses of brick or masonry", and "installing rods through the wall". As such, they merely recited the obvious method of forming the wall structure as recited in claims 1-31 (above).

#### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-

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8228. The examiner can normally be reached on Monday thru Friday, 6:30am to 2:30pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



/JEANETTE CHAPMAN/  
PRIMARY EXAMINER

JL  
11/19/2007